IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2349 OF 2004

M/s. Ashapura Jewellers & Anr. ..Petitioners
V/s.

The Chief Metropolitan Magistrate
Esplanade Court at Mumbai & Ors ..Respondents.

Shri G.V. Pandya for Petitioners.
Shri K.V. Saste, APP for Respondents.

CORAM : A.M.KHANWILKAR, J.
DATED : NOVEMBER 30, 2004

PC :-

. Heard counsel for the petitioners. The first contention raised before this court is that it was not open to the respondents to straightway take recourse to the remedy under the provisions of Securitisation Act, without making effort to get possession of the property on its own. In the first place, this contention was not raised before the court below and cannot be permitted to be raised for the first time before this court. Besides, no express provision has been brought to my notice which would preclude the Respondents from taking recourse to the remedy of the application, as filed, before the court below, under section 14 of the said Act. Viewed in this perspective, the contention raised before me is devoid

of merits.

2. The second contention raised before me is that the Respondents had already filed proceedings before the Co-operative Court for the same relief. In such a case, it was not open to the Respondents to take recourse to remedy under section 14 of the said Act, as has been done in this case. To butress this contention, reliance is placed on the provisions of section 31 (A) of the Securitisation Act. To my mind, this submission is ill founded and is based on complete miss-reading of the said provision. The said provision does not even remotely indicate that it is not open to the respondents to take recourse to remedy under section 14 of the Securitisation Act, as the remedy under the Co-operative Societies Act was already invoked in the earlier point of time. Be that as it may, even this contention was not argued before the court below as it is not even referred to in the impugned judgment. No grievance is made in the memo of writ petition that such contention was argued and not even adverted to by the court below. Taking over all view of the matter, no interference is warranted. Hence, dismissed.

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